

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1463 of 1996

in

SPECIAL CIVIL APPLICATION No 1321 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RATILAL NARSING SINDHVA

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr.H.K.Rathod, for Respondent.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 02/09/97

ORAL JUDGEMENT (PER C.K.THAKKER J.)

Admitted. Mr.Rathod, learned counsel for the respondent appears and waives service of notice of admission. In the facts and circumstances of the case,

the appeal is taken up for final hearing to day.

2. This appeal is filed against the judgment and order passed by the learned Single Judge in Special Civil Application No. 1321 of 1996. The appellant is original respondent. The respondent herein, who was original petitioner was employed as a watchman by the Gujarat State Road Transport Corporation- appellant herein ("Corporation" for short) on March 8, 1973. At that time, he was working as off-day reliever watchman. In 1979, the services of the petitioner were terminated on the ground that he was not appointed on regular basis and was working as off-day reliever. Being aggrieved and dissatisfied with the said action, he raised dispute. In Ref.No. 694 of 1979, the Labour Court ordered reinstatement with continuity of service, however, without back wages. Pursuant to the said award, the petitioner was reinstated and posted at Veraval on May 31, 1982. Since Time Scale was not given to him, he raised industrial dispute and the Industrial Tribunal, Rajkot vide award, dt. June 29, 1993, held that since the petitioner was not appointed on regular basis, he was not entitled to the Time Scale. It, however, recommended to consider the case of the petitioner for granting benefits in the light of the observations made in para 11 of the award. Relevant observations read thus:

"I have given my personal reading and thought to the award passed by the learned brother Mr.B.J.Trivedi. That, in fact, would apply to the present case, since it was not a case of "relieving watchman" but a case of a watchman otherwise on duty and which two characters are clearly different. Therefore, as I have discussed above, in my conclusion, the plea of the workman is not sustainable legally. However, in view of the fact that there is no denial of the fact that the corporation has been utilising services of this man, since last 20 years, and since the S.T.Corporation provides job to hundreds of persons throughout the State and that the Gujarat State Road Transport Corporation, is one of the best public transport undertaking in the country, it would indeed be a just and equitable benevolence, and social justice if the ST Corporation takes a positive social justice oriented and objective decision to confer administratively the benefits of regular workers to this workman.

"Reference is rejected, but this tribunal desires the first party to consider conferment of benefits as stated in para 11, in view of long though interrupted service of the workman. No order as to costs."

It appears that after the award, again, a representation was made pursuant to the observations and recommendation made by the Industrial Tribunal but the same came to be rejected by an order dt. 25th November 1994 by the Corporation. Being aggrieved by the said order, the petitioner approached this court by filing Special Civil Application No. 2906 of 1995 which was withdrawn by the petitioner on January 9, 1996. In the said order, it was observed that the learned counsel for the petitioner sought permission to withdraw the petition so as to enable him to file fresh petition challenging the award passed by the Tribunal. Thereafter, the present petition being Special Civil Application No.321 of 1996 was filed by the petitioner. Notice was issued to the Corporation. It is observed by the learned Single Judge in the impugned judgment that after consulting corporation, the learned counsel for the Corporation "fairly stated that the Respondent Corporation had no objection to grant regular time scale of pay to the petitioner from the date the petition was allowed by this court," namely, with effect from October 24, 1996. The learned Single Judge appreciated the gesture on the part of the Corporation. He was, however, of the view that strong recommendation was made by the Tribunal which was a judicial or, in any case, quasi judicial body and such recommendation ought not to have been lightly brushed aside. According to the learned Single Judge, without considering the recommendation in its proper perspective, it was rejected in a slipshod manner by the Corporation and the action was, therefore, arbitrary and unreasonable. Taking that view of the matter, the learned Single Judge held that not only the petitioner was entitled to the time scale with effect from the date of statement made by the Corporation and the order passed by the court, but from the date of the award passed by the Tribunal i.e. 29th June 1993. It is this order which is challenged by the Corporation in the present Letters Patent Appeal.

3. Mrs. Pahawa, learned counsel for the appellant-Corporation strenuously argued that the petitioner was not entitled to time scale of pay. She submitted that it is not even the case of the petitioner that he was appointed on regular basis. Obviously, therefore he cannot claim the benefit of time scale of pay. She further submitted that the Tribunal,

on merits, rejected the claim put forward by the petitioner and no error of law had been committed by the tribunal. She further stated that after the award, in pursuance of the recommendation made by the Tribunal, an application was made by the petitioner which was rejected by the Corporation. According to her, the authority considered the matter taking into account all the aspects and since there were administrative difficulties, the Corporation rejected the claim put forward by the petitioner. At that stage, the petitioner approached this court by filing a petition which also came to be withdrawn. In these circumstances, only point available to the petitioner was about legality and validity of the award passed by the Tribunal and not about effect of recommendation and/or observation made in the award of the Tribunal. She contended that the learned Single Judge was not right in observing that the recommendation ought to have been accepted by the appellant. According to her, recommendations are recommendations and they cannot be equated with an order and/or direction of the Court. When the recommendations were considered and the authority was of the view that they could not be accepted, no writ, order or direction can be issued.

4. Mr. Rathod, on the other hand submitted that it is true that a statement was made pursuant to which time scale was to be given with effect from the date of the order passed by the learned Single Judge. But after considering the facts and circumstances, the learned Single Judge was satisfied that it was a case in which such benefit ought to have been granted with effect from the date of the order passed by the Tribunal and the learned Single Judge had jurisdiction to pass such order. Mr. Rathod also submitted that the petitioner was working since more than two decades i.e. from 1973 and taking into account that fact, the order was passed by the learned Single Judge. No objection can be raised against such order. He also placed strong reliance on decisions of the Supreme Court in *Mool Raj Upadhyaya vs. State of Himachal Pradesh and others*, 1994 FLR 1257 (SC) and *Yashwant Harikatakar vs. Union of India*, 1995 LIC 718 (S.C.) In both the cases, the Court held that if the employee has completed services of ten years or more, and yet he is not appointed on regular basis, he would be entitled to get benefits to which he would be otherwise entitled.

5. In peculiar facts and circumstances of the case, in our opinion, it would be in the interest of justice that considering the fact that the petitioner was working since 1973 and that in pursuance of the recommendation made by the Tribunal the matter was considered by the

Corporation, the Corporation ought to have granted the said benefit taking into account the law laid down by the Hon'ble Supreme Court in the cases referred to above. Mrs. Pahwa is right in submitting that observations were recommendatory, but in peculiar facts of the case, they ought to have been considered in proper perspective and appropriate order ought to have been passed and benefit of time scale of pay ought to have been granted to the petitioner. In the instant case when the order was passed by the Corporation on November 25, 1994, the petitioner had completed 20 years of service. We are, therefore, of the view that the petitioner would be entitled to get time scale of pay with effect from November 25, 1994.

For the foregoing reasons, this Letters Patent Appeal is partly allowed. Instead of granting time scale of pay from the date of the award passed by the Tribunal i.e. from 29th June 1993 the petitioner-workman would be entitled to the said benefit with effect from the date on which application came to be rejected by the Corporation i.e. from November 20, 1994. The Letters Patent Appeal is accordingly partly allowed. In the facts and circumstances of the case no order as to costs.

Dt. 2.9.1997. (C.K.THAKKER J.)

(S.D.PANDIT J.)